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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20540

**FILE:** B-191132

**DATE:** June 16, 1978

**MATTER OF:** Ampex Corporation

**DIGEST:**

1. Where "make and model" ADPE solicitation is viewed as sole-source procurement, actions of agency procuring on that basis, regardless of how procurement is categorized, are (1) subject to close scrutiny; (2) must be adequately justified, and (3) will be upheld where, as here, there is reasonable or rational basis for them.
2. Agency decision to procure by means of total package approach rather than by separate procurements for divisible portions of the total requirement (component breakout) will not be disturbed by GAO where, as here, there is no clear evidence that such determination lacked reasonable basis.

Ampex Corporation (Ampex) has protested against any award of a contract pursuant to request for proposals (RFP) No. F19628-78-R-0046, issued by the Air Force Computer Acquisition Office, Department of the Air Force (Air Force). The RFP called for a contract for the acquisition, by lease, of UNIVAC 1100/42 Computer Systems to upgrade the present Government-owned UNIVAC 1106 computer systems for the Command Center Processing and Display Systems (CCPDS), at the Strategic Air Command (SAC), Aerospace Defense Command (ADC), National Military Command Center (NMCC) and the Alternate National Military Command Center (ANMCC). Notwithstanding the pendency of this protest, the Air Force awarded a contract to Sperry-Univac, Inc. (Univac), pursuant to Armed Services Procurement Regulation (ASPR) § 2-407.8(b)(2) (1976 ed.) after making the determination that such an award would be advantageous to the Government.

Ampex believes that this procurement should have been formally advertised rather than negotiated since negotiation cannot be justified on the basis cited, impossibility of drafting specifications, inasmuch as " \* \* section F of the RFP, labeled 'Descriptions/Specifications,' precisely identifies the supplies to be procured by Univac model number and by reference to Univac specifications." Also, Ampex contends that the RFP, by not allowing the submission of proposals for equal products, exceeds the General Services Administration's delegation of procurement authority (DPA) by only specifying a brand name and is, therefore, unduly restrictive of competition. With respect to one of the items listed in the RFP, Univac 131K extended storage memory, Univac Model No. 7033-99, Ampex submits that it manufactures a 131K extended storage memory which "is functionally and electrically identical to the Univac 7033-99 memory, is totally plug-to-plug interchangeable with the Univac 7033-99 memory, and has been specifically designed as a replacement for the Univac 7033-99 memory \* \* \*." Ampex's position is that the RFP is improper and should "be amended to permit the submission of competitive proposals for 'brand name or equal,' or 'plug-to-plug compatible' 131K extended storage memories," a breakout of the items, which will substantially reduce the price of the lease and result in comparable savings for the Government.

It is apparent from Ampex's correspondence that whether or not the solicitation was issued as an IFB or an RFP is not of major importance to Ampex. Rather, we note that the thrust of Ampex's protest is any form of solicitation utilized under these circumstances which does not contain a "brand name or equal" or "plug-to-plug compatible" provision with respect to the extended storage memory and does not permit procurement on an item-by-item basis is improper. In addition, Ampex states that it "has not challenged the Air Force's right to determine its minimum needs nor its determination that the RFP specifies its minimum needs. \* \* \*"

Preparatory to the issuance of the RFP on December 22, 1977, the Air Force requested on April 29 and August 4, 1977, a DPA from the General Services Administration (GSA) for a third-party, competitive procurement to replace the currently installed Univac 1106 with the UNIVAC 1100/42 computer system. The Air Force stated

that such procurement " \* \* \* is one which calls for competition between the Original Equipment Manufacturer (OEM), Univac, and other 'third-party' offerors who propose the specified, Univac ADPE acquired through other means." The bases for such request, found in the April 29 letter, read as follows:

"a. The CCPDS is the only computer system which provides real-time tactical missile warning and attack assessment information and is the singularly most critical on-line warning system. This capability is essential for the survival and employment of SAC strike forces as well as providing information to the NCA. The availability and response criteria of the CCPDS is paramount, since it is a dedicated real-time tactical missile warning/command control system. Required on-line availability is 98 percent with a two (2) second critical response criterion.

"b. Conversion to a non-UNIVAC system will require 98 manyears/\$7.698M for software conversion effort and would take two (2) years to complete. Thirty-eight in-house programmers/analysts would be required to continue with maintenance/development of the existing system. No manpower is available to support the conversion effort. Parallel operations would cost \$1.268M.

"c. A six month facility construction lead time is required if UNIVAC is not the selected vendor. Space for a new facility or extensive modification to an existing facility or a military construction program request could delay implementation from one - [to] five years and costs in excess of \$1 M.

"d. Immediate support to process 100 percent of stress data requirements and support the expanded capacity required by the direct interfacing of sensors, such as PAVE PAWS, COBRA DANE, FPS-85, SPS, GCN-3, is essential since the current system is capable of processing only 55 percent of the workload.

"e. Software has been standardized and developed by HQ SAC for the CCPDS community involving four U1106 user sites. A non-UNIVAC system would require dual software development efforts at each user site. An upgrade at SAC must provide the capability to continue this software development in accordance with JCS Memo 407."

Subsequent to the April 29 request, after additional data was submitted by the Air Force and meetings held between GSA and the Air Force, GSA denied the Air Force's procurement request, while suggesting an interim upgrade for CCPDS at SAC Headquarters only. The Air Force, on August 4, 1977, accepted this suggestion, but requested authority for all four sites. On August 12, 1977, the Commission for Automated Data and Telecommunication Service, GSA, issued a DPA to the Air Force to upgrade the Univac 1106 supporting the CCPDS with the UNIVAC 1100/42 at SAC Headquarters only. This was later amended on November 7, 1977, to include the three remaining sites: ADC, NMCC and ANMCC. The DPA, among other things, required that the RFP specify "make and model" and that it was for an interim period during which the Air Force is required to "design systems specifications and replace this equipment in a fully competitive manner \* \* \*." The interim period was to extend for 48 months from the issuance date of the original DPA, August 12, 1977. We note that GSA has specifically withheld authority for the future planned upgrade procurement.

The subject procurement was negotiated under the authority of 10 U.S.C. § 2304(a)(10) (1976) ("impracticable to obtain competition"), as implemented by ASPR § 3-210.2 (xiii) (1976 ed.), which provides that contracts may be negotiated "when it is impossible to draft, for solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services." In this regard, the record shows that on November 17, 1977, the contracting officer determined that it was impracticable to obtain competition and impossible to draft adequate specifications for the acquisition of the Univac 1100/42 computer system by formal advertising, as follows:

### Findings

"1. The Air Force Computer Acquisition Office proposes to procure by negotiation, on a specified make and model basis, an interim upgrade to UNIVAC 1100/42 series computer systems which will replace government-owned UNIVAC 1106 computer systems currently installed at Hq Strategic Air Command, Hq Aerospace Defense Command, National Military Command Center and Alternate National Military Command Center. The four locations comprise a four node system called the Command Center Processing and Display System (CCPDS). In addition, software, maintenance service by UNIVAC for new and currently installed government-owned equipment, training, vendor support, special spares requirements for ADCOM, and documentation must be procured for the CCPDS. The CCPDS consolidates and displays warning and status of forces information currently obtained from Satellite Early Warning and other sensor systems. The data is critical to the decision making process of the National Command Authorities (NCA). The pending contract will contain renewal options which provide a contract life of 40 months, ending August 1981. By that time, the complete CCPDS system must have been fully competed and installed. Very limited or no competition may be available because of the above requirements. The requirements of the various sites differ and it is impossible to definitely determine for formally advertised procedures the exact requirements for each user.

"2. The use of formal advertising to acquire the above-described equipment and other services is impracticable because of the expected limited competition and the inability to exactly specify the requirements for IFB purposes; hence adequate specifications or any other detailed description of the system and services cannot be made at this time.

"Determination

"The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising."

In support of his findings, the contracting officer takes issue with Ampex's contention that the drafting of specifications in this instance is not impossible. While admitting that identification of a portion of the items being procured is by Univac model number, he sets forth as follows why the drafting of adequate specifications is impossible:

"The equipment (line items 0001 thru 0004 [of section F in RFP]) being procured is identified by UNIVAC model number. The software (line 0005) being procured is referenced to UNIVAC technical specifications and published technical literature. Neither the specifications nor the technical literature is uniquely identified. The exact software that is to be acquired will be the latest version available at time of contract award. The spare parts inventory (line items 0007AF thru 0007AL) list could not be specified by the Government. Only the offerors are qualified to develop this list. The training requirements (line items 0012 through 0015) cannot be precisely articulated. Only a desired learning outcome can be stated because this training is mostly informal, on-the-job training. Based on the facts cited above, clearly it is impossible to draft well defined, unambiguous specifications to be used in a formally advertised procurement."

With respect to Ampex's contention that the core memories should be procured separately rather than via the total package approach as the Air Force has proceeded, the contracting officer argues that "the Air Force is acquiring automatic data processing systems" and "the components in these systems are connected in series and are not operationally severable from the system." Further, if multiple awards were made, it is the contracting officer's belief that a system integration contractor would be required which would present the following disadvantages:

"a. In automatic data processing system failures/malfunctions, it is often difficult to isolate that exact cause of the failure. Experience has shown that multiple vendors do not readily accept blame for component failure. As a result, disputes between vendors occur as to whose component has failed. These disputes are time consuming and result in unusual delays in restoring the system to the specified level of effectiveness. This problem will always exist whenever multiple vendors are working on a non-severable system. In view of this problem, it is highly unlikely to find a prime contractor willing to accept responsibility for total system effectiveness.

"b. The corollary to the above disadvantages is that management problems are compounded. Multiple vendors would be answerable to two managements - its own and the system integration contractor.

"c. It is very doubtful any contractor will accept responsibility for integrating multiple vendors' equipments into a working system.

"d. For on-site maintenance coverage at Hq ADCOM, a single contractor with an aggregate award contract would require only one maintenance person present at any one time to maintain the entire system. If Ampex equipment were added, another maintenance person would be required and this would increase maintenance costs. In general, as the number of contractors increase, the number of maintenance personnel required increases and the net impact is an increase in overall cost to the Government.

"e. With the increased number of maintenance personnel required in the multiple vendors scenario, the problem of security increases in importance. More user agency escorts are required to escort contractors into classified areas. Physical surveillance of contractor people becomes more difficult.

"f. The Government administrative costs are increased simply because more than one contract is awarded."

Concerning Ampex's contention that the Air Force exceeded the authority delegated by the DPA, essentially, the contracting officer's reply is that the DPA stated that the procurement shall be on a "make and model" basis and that is exactly the manner in which the RFP was issued.

Finally, the contracting officer advises that he was aware of the possibility that this procurement could become noncompetitive, see D&F, supra. Therefore, the Air Force issued a "letter of interest" to 77 third-party vendors, with seven of them requesting a copy of the RFP. In addition, the procurement was synopsisized in the Commerce Business Daily, resulting in additional requests from nine more vendors. Based on these requests and "the fact the Univac sells to third party dealers, [the contracting officer] concluded that this procurement could be competitive." Moreover, the contracting officer states, "For all intents and purposes, this procurement was never envisioned as a sole-source acquisition."

In response, Ampex argues that the subject specifications do not provide for full competition which violates Federal Procurement Regulations (FPR) § 1-4.1102-16 (1964 ed., amend. 170) - "Competitive procurement," which provides that solicitation specifications should allow "full competition" and be "devoid of bias toward either a specific product or a specific offeror." Then, Ampex cites additional sections of the FPR, which emphasize that competition to the "maximum practicable extent" is required (§ 1-4.1107-2) and "possible breakout of components for competitive procurements" is encouraged when a contracting activity is involved in a "procurement [that] appears to be noncompetitive" (§ 1-3.101(d)), and submits that the RFP's failure to include a "brand name or equal" or "plug to plug compatible" provision is contrary to such regulations. At this juncture, we must point out that it is the ASPR that is applicable to the present procurement. However, since ASPR has similar provisions encouraging competition, we do not find that Ampex's citations impede our consideration of this matter.

Ampex disagrees with the Air Force's determination that, "in the case of the [CCPDS], the Air Force's absolute minimum need for a highly reliable and maintainable total system precludes the Air Force from assuming the normally acceptable risk inherently posed by including any allegedly 'equal' plug-to-plug compatible components in computer systems." (Emphasis supplied.) Ampex advises that in February 1977, its plug-to-plug compatible memory was installed in a UNIVAC 1100/42 system and it " \* \* \* has and is being supported jointly by Univac and Ampex." In this connection, Ampex states, "We must therefore conclude that there is no . . . justification to be suspicious of the reliability of . . . plug compatible contractor support [from any potential contractor]." Further, Ampex refers our Office to eight additional installations where its extended core memories (Model 1108R) have been installed and supported in Univac 1108 and 1106 systems.

The Air Force, in support of its determination, referred to above, identified some selected problems encountered in the past concerning plug-to-plug compatible equipment:

- a. The time necessary for problem isolation is increased which, in turn, has an impact on problem resolution;
- b. The depth of maintenance engineering of the "or equal" or "plug compatible" vendors has not compared with that of the OEM;
- c. Additional downtime has resulted from the third-party maintenance contractors not having all of the diagnostic tools necessary for resolution of critical system problems; and
- d. Each vendor involved in multiple vendor situations has a reluctance to accept responsibility for causing a problem, which results in finger-pointing and delay.

Also, the Air Force indicates that Ampex has only one facility (as of February 9, 1978) that has the referenced Univac equipment and an Ampex extended storage memory installed and operational.

We note that the tenor of the Air Force report is one of urgency--the present system is saturated and must be upgraded with a system that has proven reliability and maintainability immediately. Such is emphasized when the Air Force states:

"This entire system is presently scheduled to be replaced by a competitive procurement in the future after sufficient time has been given to the preparation of the procurement, software conversion, installation preparation and other matters. Furthermore, one must consider the short period of time presently available to conduct a system replacement procurement, a factor which in large part drives the specified make and model requirement. SAC has a need for a system upgrade now, and requires that upgrade to be as reliable and as maintainable as possible given the present system."

GSA, the overseer of the automatic data processing equipment management and procurement (See Federal Property Management Regulations (FPMR) § 101-32 (1977) and Federal Procurement Regulations (FPR) § 1-4.11 (1964 ed. amend. 170)), has also submitted a report to our Office. It is GSA's position that the Air Force did not exceed the authority delegated to it by the DPA. GSA, in support of its position, points out that the DPA specifically states "Your [Air Force] Solicitation shall be on a make and model basis" and this is what is expressed by the subject RFP.

We concur. A review of both the DPA and RFP with respect to the designation of a specific make and model indicates no inconsistency between the documents.

With respect to the Air Force's position concerning the need for a make and model specification and a total procurement, GSA, in support of the Air Force position and, in essence, its own actions, advises:

"\* \* \* at the time of formulating the August 12 DPA, GSA had intended to require full and open competition among the third party and plug compatible segments of the market place, by stating

in the DPA make and model or plug compatible equivalents. In addition, although the DPA did not require that the RFP solicit on an item by item basis, GSA had expected that the total requirement would have been separated into comparable bid items. On February 1, 1978, a draft DPA amendment was prepared to change the DPA to permit the offering of severable items and compatible equivalents. After several intermediate discussions, the Air Force, in a classified briefing at GSA on February 17, 1978, presented compelling reasons as to why the subject acquisition strategy and solicitation could not be changed as GSA proposed. In short, the Air Force is of the view that it cannot afford to take the operational risk which it feels is associated with plug to plug compatibles and multi-vendor support \* \* \*. GSA agrees with the Air Force that the DPA should not be amended at this point in time."

The compelling reasons referred to in the above quote were that "[t]he proposed GSA amendment would have resulted in (1) undue delay likely to jeopardize national defense, (2) potential operational problems associated with the multi-vendor environment which would have presented an unacceptable risk to national defense, and (3) unacceptable technical risks created by non-OEM maintenance vendors."

As stated above, the thrust of Ampex's protest is directed toward the omission of a "brand name or equal" provision and the preclusion of separate procurements for divisible portions of the total package. In other words, Ampex has raised questions concerning the fact that the solicitation, except for the third-party offeror provision, appears to be a sole-source procurement for a particular product.

We note that the FPR characterizes a procurement based on specific make and model specifications as a noncompetitive procurement (sole-source procurement):

"FPR § 1-4.1102-18 Noncompetitive (Sole source) procurement. (1964 ed. amend. 170).

"A 'noncompetitive procurement ('sole source procurement') means that the Government's requirements are set forth in the form of necessary specifications which are so restrictive that there is only one known supplier capable of satisfying the Government's requirement. Procurements based on specific make and model specifications/purchase descriptions fall in this category, notwithstanding the existence of adequate price competition \* \* \* ."

We also note that such characterization does not change even if there is adequate price competition. It appears that the FPR envisioned the use of a "third party offeror" provision, as here, where a specific item is sought with no concern or relatively little concern for the supplier of the item. Nevertheless, it is apparent that the inclusion of such a provision would not remove the procurement from the sole-source category. Our review of ASPR indicates that ASPR does not have any provision which is in conflict with the aforementioned FPR section. While ASPR is not as explicit as the FPR in this respect, ASPR § 1-1206.1(b) (1976 ed.) does provide that "[t]he words 'or equal' should not be added when it has been determined \* \* \* that only a particular product meets the essential requirements of the Government \* \* \* ." In addition, we do note that even though ASPR's authorization of a "sole source make and model procurement" is limited, the facts of this case are such that the authorization would be applicable.

While the Air Force attempted to make this procurement competitive, we recognize that most, if not all, "make and model" procurements can be viewed as "defacto" sole-source solicitations. Accordingly, the question before our Office is whether the Air Force, regardless of how it categorized the procurement, has properly justified its actions.

By virtue of the requirement for maximum practical competition, agency decisions to procure sole source must be adequately justified and are subject to close scrutiny. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. Such decisions, however, will be upheld if there is a reasonable or rational basis for them. Winslow Associates, 53 Comp. Gen. 478 (1974), 74-1 CPD 14, and B-178740, May 8, 1975, 75-1 CPD 283.

In applying these principles, our Office has recognized that noncompetitive awards may be made where the minimum needs of the Government can be satisfied only by items or services which are unique, B-175953, July 21, 1972; where time is of the essence and only one known source can meet the Government's needs within the required timeframe, 52 Comp. Gen. 987 (1973), Hughes Aircraft Company, 53 id. 670 (1974), 74-1 CPD 137; California Microwave, Inc., 54 id. 231 (1974) 74-2 CPD 181; where only a single source can provide an item which must be compatible and interchangeable with existing equipment, B-152158, November 18, 1963, and B-174968, December 7, 1972; and where only one firm could reasonably be expected to develop or produce a required item without undue technical risk, Control Data Corporation, 55 Comp. Gen. 1019 (1976), 76-1 CPD 276, and Hughes Aircraft Company, supra. On the other hand, we have objected to sole-source procurements when the circumstances did not justify noncompetitive awards. 52 Comp. Gen. 987 (1973) and Environmental Protection Agency sole-source procurements, 54 id. 58 (1974), 74-2 CPD 59.

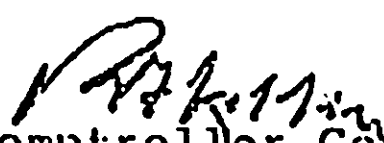
After carefully considering Ampex's assertions and the various documents of record, referred to above, we are unable to conclude that the Air Force's actions in the instant procurement were without a reasonable basis or legally objectionable.

With respect to the issue of separate procurements for divisible portions of the total package, generally, it is for the contracting agency to make the determination to procure by means of a total package approach rather than by separate procurements for divisible portions of the total requirement (component breakout). In the absence of clear evidence that such determinations lack a reasonable basis, they will not be disturbed by our Office. Control Data Corp., 55 Comp. Gen. 1019, 1023 (1976), 76-1 CPD 276; Allen and Vickers, Inc., et al., 54 Comp. Gen. 445, 452 (1974), 74-2 CPD 303. Memorex Corporation, B-187497, March 14, 1977, 77-1 CPD 187.

To the extent that Ampex seeks to have component breakout under this contract, we believe the Air Force has acted reasonably in requiring a total package procurement. Even though separate procurements may be possible, as Ampex claims, the benefits of a total procurement under the circumstances of this case cannot be denied. Therefore, we find no merit in this portion of the protest.

Based on the foregoing conclusions, which we believe are dispositive of Ampex's protest, all other issues raised by Ampex are rendered academic.

Accordingly, Ampex's protest is denied.

  
Acting Comptroller General  
of the United States